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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 298

STOCKHOLDERS OF PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND,

Appellants,

vs.

WARREN F. STERLING, RECEIVER FOR PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

ELIAS B. HARTLE,
WILLIAM H. BOVEY,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction and motion to dismiss or affirm.....	1

Cases Cited.

Baugher v. Nelson, 9 Gill 303.....	4
B. & O. R. R. Co. v. Maughlin, 153 Md. 367.....	4
Mister v. Thomas, 122 Md. 445.....	4
Murphy v. Wheatley, 102 Md. 501.....	3
Robinson v. Hospelhorn, 179 Atl. 515.....	3
Thistle v. Frostburg Coal Co., 10 Md. 144.....	

Statutes Cited.

Constitution of Maryland, Section 39, Article 3.....	2

IN THE COURT OF APPEALS OF MARYLAND

OCTOBER TERM, 1935

GENERAL DOCKET No. 61

JOHN J. GHINGHER, BANK COMMISSIONER FOR THE STATE OF MARYLAND, RECEIVER FOR THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND,

vs.

STOCKHOLDERS OF PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND.

STATEMENT OF APPELLEE, RECEIVER FOR THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, OPPOSING JURISDICTION AND INCLUDING MOTION BY APPELLEE TO DISMISS OR AFFIRM.

To the Honorable the Justices of the Supreme Court of the United States:

The Appellee, Receiver for the Peoples Banking Company of Smithsburg, Maryland, under the provisions of Rule 12, paragraph 3, and Rule 7, paragraph 4, of the Supreme Court of The United States, respectfully moves

(1) That the appeal in this cause be dismissed for lack of jurisdiction,

or

(2) That the decision of the Court of Appeals of Maryland be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument,

and states the following matter or ground therefor:

1. The statute claimed by the appellants to be repugnant to the Constitution of the United States is substantially in the language of the Federal Statutes covering the liability of stockholders in National Banks and the obvious validity is such that mere assertion of the appellants to the contrary would not confer jurisdiction.

2. The appellants state that their original petition asserted said Section 72 was contrary to the provisions of the Constitution of the United States and that the Circuit Court for Washington County, Maryland, held it constitutional, but applied it in a manner that gave them the result sought. On an appeal by the Receiver the Court of Appeals of Maryland also held said statute constitutional, but reinstated the assessment order that the lower court had revoked. The appeal now sought by the appellants is not really based on a complaint that said statute is unconstitutional, but rather on the application of a concededly constitutional statute.

3. Section 39 of Article 3 of the Constitution of Maryland is not self-executing. It simply says no banking charter shall be granted except upon the condition that the stockholders shall be liable to the amount of their shares "for all its debts and liabilities." Nothing is said as to whom payable or manner of payment.

4. None of the Maryland cases cited by the appellants construe the provision of the Maryland Constitution itself, but all the cases construe the statute alone and can not be taken as having held that the Maryland Constitution rigidly required any particular form or enforcement of liability.

5. The Court of Appeals of Maryland held in this case that the Maryland Constitution does not fix the maximum liability for stockholders in banks, but does fix the minimum liability. On January 9, 1906, the same proposition was held in

Murphy v. *Wheatley*, 102 Md. 501.

In that case the Court held that stockholders were liable for *twice* the par value of their stock, instead of just the par value alone, under the statute there being applied.

So that the appellants here might contend that they are liable to creditors who became such during the period that each stockholder held his stock, under the provisions of any and all former adjudications, and no further argument would be needed to show that the Legislature had the right to enact said Section 72 imposing an additional liability.

6. Said Section 72 fixed no liability upon existing stockholders at the time of its enactment in 1910. It created an asset of the corporation for the benefit of creditors "if necessary to pay the debts of such corporation." It is conditional and contingent and is dormant and unenforceable until it is needed to pay the debts of the corporation.

Robinson v. *Hospelhorn* (Md.), 179 Atl. 515, 522.

No stockholder had to continue holding his stock after enactment of said Section 72, and if he continued to hold his stock and receive the dividends and benefits, he should have no valid complaint when liability finally became fixed many years later.

7. The appellants are stockholders and here attempt to complain of being deprived of property without due process of law, although the creditors' right to individually sue the stockholders is what they really seem to complain of. The creditors would be the proper parties to attempt to assert any such alleged claim and if they are content to have the Receiver collect the stock liability for them, as provided by said Section 72, the stockholders are not the proper parties to appeal on this ground.

8. On January 15, 1914, the Court of Appeals of Maryland approved of the procedure of the stock liability being collected by the Receiver under the provisions of said Section 72.

Mister v. *Thomas*, 122 Md. 445.

At no time since the enactment of said Section 72, in 1910, has the Court of Appeals of Maryland held otherwise.

9. The appellants stress the decisions of the Court of Appeals of Maryland in cases arising under the Act of 1870. The concluding language of this Act states it to be "upon this further condition that this Act and every part of it may be altered from time to time or repealed, by the Legislature." Said Section 72 placed no heavier liability on a stockholder than an amount equal to the par value of his stock, as was the case under the previous Act. It merely altered and remodelled a remedy, which could not be objectionable.

Baugher v. *Nelson*, 9 Gill (Md.) 303

Thistle v. *Frostburg Coal Co.*, 10 Md. 144.

It is well settled that no one has a vested right in a remedy, and that the Legislature may change a legal remedy, so long as the one substituted is equally effective in coercive force with the one repealed.

B. & O. R. R. Co. v. *Maughlin*, 153 Md. 367.

The Constitution of Maryland provides that bank stockholders shall be made liable for *all* its debts and liabilities, and said Section 72 effects this result better than was the case under the decisions construing the former Act whereby the stockholder was not liable for *all* the debts of the bank, but only for the debts contracted while he was a stockholder. The intent of the Legislature in enacting said Section 72 may well be taken as a desire to correct the practice that thwarted the real Legislative intent contained in the previous Act and to insure fully carrying out the provisions of the Constitution of Maryland, even though said Section 72 would be construed as imposing an additional liability on stockholders.

Respectfully submitted,

ELIAS B. HARTLE,
WILLIAM H. BOVEY,
Counsel for Appellee.

Service acknowledged this 27th day of July, 1936.

D. ANGLE WOLFINGER,
CHARLES F. WAGAMAN,
JOHN WAGAMAN,
Counsel for Appellants.